IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY APPLICATION NO.279 OF 2007
IN
COMPANY PETITION NO.361 OF 1996

Navalkishore J. Khanna ..Petitioner.
and
Hemant Kumar B. Vyas ..Applicant.
Vs.
The Official Liquidator of
M/s. Bombay Silk Mills Ltd. (in liqn..) ..Respondent.

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Mr. Ajay Panikar for the Petitioner.
Ms. K.V. Gautam, Dy. Official Liquidator present.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

13th April, 2007.

P.C. :

1. An order of winding up was passed against a company by the name of Bombay Silk Mills Limited on 3rd December, 1998. The Official Liquidator was appointed as Liquidator by an order dated 19th February, 1999 passed in Company Petition 361 of 1996. The company in liquidation had outstanding dues to several banks which were its secured creditors viz. State Bank of India, State Bank of Hyderabad and Canara Bank. The secured creditors stood outside

the proceedings for winding up. A suit for the recovery of dues was filed by the secured creditors which was transferred to the Debt Recovery Tribunal and numbered as O.A. 1995 of 1999. The Applicant was a shareholder and a director of the company in liquidation and had also furnished a guarantee to the secured creditors, to secure the loans and facilities advanced to the company in liquidation. An agreement was arrived at between the secured creditors and the Applicant under which the Applicant agreed to pay an amount of Rs.12 Crores together with interest to the secured creditors in settlement of their outstanding dues. The Applicant in turn proposed to enter into an agreement for the development of the land of the company in liquidation.

2. Company Application (Lodg) 1099 of 2003 was taken out by the Applicant before this Court by which leave of the Court was sought to execute and file consent terms before the Debt Recovery Tribunal. A direction was sought against the liquidator to execute and sign the consent terms for and on behalf of the company in liquidation. When the application came up on 12th December, 2003

this Court was of the view that in order to safeguard the dues of the workers who were entitled to share pari passu with the secured creditors under Section 529-A of the Companies Act, 1956 certain directions were necessary. Accordingly this Court directed the Liquidator to issue an advertisement inviting claims of the workers of the company in liquidation. The Liquidator was directed to place an interim report after the claims have been received. The liquidator was also to carry out an adjudication. Thereafter by a further order dated 21st January, 2004 this Court noted the statement of the Liquidator that in pursuance of an advertisement that was issued in compliance of the directions issued by the Court on 12th December, 2003, 34 claims in the amount of Rs.43.58 lacs had been received. Accordingly the Court allowed the application subject to the condition that an amount of Rs.44 lacs shall be deposited with the Official Liquidator within a period of six weeks and, subject to an undertaking of the Applicant that if any further claim of a worker was received, the Applicant would make good the amount required to be deposited upon an adjudication by the Liquidator. Certain consequential directions were issued by the Court on 5th February,2004.

3. Thereupon Consent Terms were filed before the Debt Recovery Tribunal on 30th January, 2004. In the Company Petition it has been stated that the Applicant has paid the entire dues of the secured creditors and the learned counsel stated that a payment of Rs.13.5 Crores approximately was made. The State Bank of India on 19th May, 2006, the Canara Bank on 18th May, 2006 and the State Bank of Hyderabad on 16th May, 2006 issued communications stating that the dues of these banks have been duly paid in pursuance of the settlement. Consequently by a letter dated 3rd August, 2006, the Debt Recovery Tribunal forwarded a certificate of sale of the immovable property in favour of the Applicant.

4. The Applicant has now prayed that the Official Liquidator be directed to issue a no objection for the transfer of 18 share certificates standing in the name of the company in liquidation in the Lalbaug Industrial Estate Private Limited in favour of the Applicant, by virtue of the Applicant having purchased the property being Plot No. 3A admeasuring 4342.85 sq. mtrs. comprised in C.S. No.4/50, Parel

Sewri Industrial Estate.

5. In the affidavit filed by the Liquidator it has been stated that in pursuance of the directions issued by this Court on 21st January, 2004 the Applicant deposited a sum of Rs.44 lacs towards the dues of the workers and accordingly the Liquidator has also disbursed a dividend of 100 paise in a rupee to the workers. In paragraph 8 of the reply, it has been stated that possession of the premises of the company was taken by the Court Receiver and hence no share certificates in respect of the Lalbaug Industrial Estate are in possession of the Official Liquidator. The Liquidator has therefore stated that the Applicant may be directed to apply for a duplicate share certificate at his own costs. On behalf of the Applicant it has been stated on instructions that the Court Receiver had taken possession in pursuance of orders passed in the proceedings instituted by the secured creditors and that save and except for those claims which have been settled, there is no other outstanding claim. However, learned counsel states that the Applicant would lodge an undertaking before the Court together with an indemnity within a

period of two weeks from today agreeing to reimburse the Liquidator forthwith on any other claim being adjudicated upon, in respect of the premises represented by the share certificate. This shall be done within a period of two weeks from today. The Applicant has annexed the balance-sheet of the company in liquidation for the year 1995-96 which shows that the value of the shares held in Lalbaug Industrial Estate was Rs.17,000/- as on 31st March, 1996. Learned counsel states that the aforesaid amount shall be deposited with the Liquidator within a period of two weeks from today. Conditional on the aforesaid deposit being effected and the undertaking and indemnity being filed, the Company Application is made absolute in terms of prayer clause (a).